

REMARKS

Claims 1-42 constitute the pending claims in the present application. Claim 42 has been indicated as allowable. Claims 3, 14, and 15 are indicated as allowable subject matter, if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The specification has been amended to correct errors that are typographical in nature. In particular, an equation has been clarified by adding parentheses. Support for this amendment appears in Figure 2 as filed. No new matter has been added.

Claims 1, 8, 11-13, 25, 27, and 28 have been amended. Claims 2, 3, and 9 have been cancelled. These claims have been cancelled so that the other claims may be allowed and a patent may issue. Cancellation of this claim should in no way be construed as an acquiescence or surrender of any subject matter. Applicants reserve the option to prosecute further the originally filed claims or similar ones, in the instant or a subsequent patent application.

Further, silence with regard to any of the Examiner's rejections is not an acquiescence to such rejections. Specifically, silence with regard to Examiner's rejection of a dependent claim, when such claim depends from an independent claim that Applicants consider allowable for reasons provided herein, is not an acquiescence to such rejection of the dependent claim(s), but rather a recognition by Applicants that such previously lodged rejection is moot based on Applicants remarks and/or amendments relative to the independent claim (that Applicants consider allowable) from which the dependent claim(s) depends.

Rejections under 35. U.S.C. 112

The Examiner rejected claim 6 because its "sample window" lacked antecedent basis. Claim 1, on which claim 6 ultimately depends, has now been amended to provide the antecedent basis.

The Examiner rejected claim 27 as being indefinite in that it failed to set forth how the housing is configured for positioning in a sample containment apparatus. Claim 27 has been amended to reference a first window, recited in amended claim 25, that is disposed in a sample containment apparatus. Support for this amendment may be found, for example, on page 7 lines

14-19. Accordingly, Applicants respectfully request reconsideration and withdrawal of this rejection.

Rejection under 35 U. S. C. 102(b)

Claims 1, 2, 4, 5, 7, 8-13, 16-19, 24 and 28-33 stand rejected under 35 U.S.C. 102(a) as being anticipated by Hirako (JP 11-83627).

Claim 1 has been amended to include the subject matter of canceled claims 2 and 3, and thus includes the subject matter of claim 3 that is considered to be allowable by the Examiner. Claim 2 has been canceled. Claims 4, 5, and 7 depend from amended independent claim 1. Applicants consider these dependent claims to be allowable at least by way of their dependency from independent claim 1.

Claim 8 has been amended to recite “so positioning an optical blocking element as thereby to inhibit reflections from a sample window within the optical path from reaching the optical pick-up.” Support for this amendment can be found at, for example, on page 9, lines 9-14 of the instant specification. Hirako does not disclose or suggest a method or apparatus for inhibiting any reflections of the light source due to a sample window, or due to the sample’s surface. Claim 9 has been canceled. Claim 10 depends on amended independent claim 8.

Claim 11 has been amended to include a first solid transparent window and a solid transparent second window that are in substantially the same plane. Support for this amendment may be found in the instant specification at, for example, page 10, lines 18-21, and in Figure 1. As the Examiner notes, Hirako discloses only an “*opening* in the lower portion of chamber 29/35.” (Emphasis Applicants). Hirako does not disclose or suggest a method or apparatus for analyzing a sample that includes a first and second solid transparent window in substantially in same plane. Claims 12-13, 16-19, and 24 depend from amended independent claim 11. Applicants consider these dependent claims to be allowable at least by way of their dependency from independent claim 11.

Claim 28 has been amended to further recite so positioning an optical blocking element so thereby to inhibit reception of light that has been reflected from the sample’s surface. Support for this amendment can be found at, for example, on page 9, lines 9-14 of the instant specification. Hirako does not disclose or suggest a method for inhibiting the reflections of a light source due to a sample window, or due to the sample’s surface. For example, element 28 of

Hirako does not minimize such direct surface reflections from the sample's surface. Claims 29-33 depend from amended claim 28. Applicants consider these dependent claims to be allowable at least by way of their dependency from independent claim 11.

Claims 11-13, 17, 19, 25 and 26 stand rejected under 35 U.S.C. 102(b) as being anticipated by Weston, U.S. Patent 4,968,143. Claims 11 and 25 have been amended to include a first window and a second window that are substantially in the same plane. Weston does not disclose, or suggest, a method or apparatus for analyzing a sample with a first and second window substantially in the same plane. Claims 12, 13, 17, and 19 depend from amended claim 11. Applicants consider these dependent claims to be allowable at least by way of their dependency from independent claim 11. Claim 26 depends on amended claim 25. Applicants consider this dependent claim to be allowable at least by way of its dependency from independent claim 25.

Accordingly, Applicants respectfully request reconsideration and withdrawal of these rejections.

Rejections under 35 U. S. C. 103(a)

Claims 20-23, and 34-41 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Weston. Claim 11 has been amended to include a first window and a second window that are in substantially the same plane. Weston does not disclose, or suggest, a method or apparatus for analyzing a sample with a first and second window substantially in the same plane. Claims 20-23 depend from amended claim 11. Applicants consider these dependent claims to be allowable at least by way of their dependency from amended independent claim 11.

Claim 28 has been amended to further recite so positioning an optical blocking element as thereby to inhibit reflections that have been reflected from the sample's surface. Weston does not disclose or teach minimizing reception of direct surface reflections. Claims 34-41 depend from amended claim 28. Applicants consider these dependent claims to be allowable at least by way of their dependency from independent claim 28.

Accordingly, Applicants respectfully request reconsideration and withdrawal of this rejection.

CONCLUSION

In view of the foregoing remarks, Applicants submit that the pending claims are in condition for allowance. Early and favorable reconsideration is respectfully solicited. The Examiner may address any questions raised by this submission to the undersigned at 617-832-1000. Should a further extension of time be required other than provided for, Applicants hereby petition for same and request that the extension fee and any other fee required for timely consideration of this application be charged to Deposit Account, **No. 06-1448**.

Respectfully Submitted,



Theresa C. Kavanaugh
Reg. No. 50,356
Agent for Applicants

Date: October 31, 2003
Customer No: 25181
Patent Group
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210-2600